No. 77-1330

In the Supreme Court of the United States

OCTOBER TERM, 1977

ROY ISAKSON, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioners contend that they were improperly denied employment as patrolmen with the Chicago Police Department.

1. In December 1971, the City of Chicago gave a competitive examination for the position of patrolman in the Chicago Police Department. Petitioners, a group of white candidates who had passed the examination, were awaiting possible appointment as patrolmen when the United States filed suit against the City in the United States District Court for the Northern District of Illinois. The United States alleged, *inter alia,* that the examination discriminated against minority persons, in violation of Title VII of the Civil Rights Act of 1964, 78 Stat. 253, as amended, 42 U.S.C. (and Supp. V) 2000e *et seq.* (Pet. App. 2a).

In November 1974, the district court found the 1971 examination discriminatory and enjoined the City from making any further appointments from the roster compiled on the basis of the results of that examination. 385 F. Supp. 543. The court subsequently permitted hiring from the 1971 roster if certain numbers of minority persons were appointed at the same time. Petitioners then intervened in the suit (Pet. App. 2a-3a).

In its final judgment, the district court found that the 1971 examination had a grossly disproportionate impact on minority persons and was not validated as job-related. As a remedy, the court ordered the City to meet certain goals with respect to minority hiring. 411 F. Supp. 218. The court permitted, but did not require, the City to continue hiring from the 1971 roster (Pet. App. 3a).

The court of appeals affirmed the final decree in all respects but one. 549 F. 2d 415. It vacated the portion of the final decree that permitted the City to ignore the roster compiled from the 1971 examination and directed the district court to preserve as much of the state statutory hiring scheme as possible by ensuring that the City utilize the results of some examinations given pursuant to Illinois law in appointing patrolmen. 549 F. 2d at 438.

On remand, the district court noted that in 1975 the City had given a new examination and had compiled a new eligibility roster based on that examination. The district court found that the 1975 eligibility list was non-discriminatory and was valid under both state and federal law (Pet. App. 11a-12a). The court further observed that, by choosing to make appointments from the 1975 roster, the City had in effect struck the 1971 list, a practice

permitted by state law (Pet. App. 12a-13a).[1] Accordingly, the court concluded that petitioners had no right under state law to be appointed patrolmen.

The court of appeals affirmed in an opinion on which we rely (Pet. App. 1a-8a). The court held that the City had acted within its authority under state law in cancelling the eligibility roster based on the 1971 examination (*id.* at 6a) and that this action extinguished any claims petitioners had by virtue of having been on that roster.

2. Petitioners' contention (Pet. 11-12) that they have improperly been denied "vested rights" under state law[2] is incorrect. As the court of appeals found (Pet. App. 5a-6a), the City's action in cancelling the 1971 roster, even though not all persons on it had been appointed, was in conformity with applicable state law. Petitioners do not challenge this conclusion.

Moreover, petitioners concede (Pet. 13) that the district court was required to exercise its discretion in devising remedies for past discrimination. The district court properly exercised that discretion, while adhering to the mandate of the court of appeals, by approving a hiring scheme that utilized the results of an examination given in accordance with state law. Since state law specifically provided for the City to substitute a new roster for one based on a test given more than two years before, the district court's order approving the City's action did not deprive petitioners of any "vested" legal rights.

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[1]The City formally struck the 1971 list after the district court entered its order (Pet. App. 4a).

[2]As the court of appeals noted (Pet. App. 5a n. 3), petitioners' property right claims are based solely on state law.

It is therefore respectfully submitted that the petit for a writ of certiorari should be denied.

WADE H. MCCREE, JR.,
Solicitor General.

DREW S. DAYS, III,
Assistant Attorney Gene

MAY 1978.

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